

NO. 24438

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant/Cross-Appellee

vs.

GORDON JOSEPH AKINA, Defendant-Appellee/Cross-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 00-1-0120)

ORDER DISMISSING CROSS-APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that Cr. No. 00-1-0120 remains undisposed as to Count II of the indictment. Defendant Akina's cross-appeal of the October 3, 2000 order denying dismissal of the indictment for preindictment delay and the April 18, 2001 order denying suppression of evidence is an appeal of interlocutory orders. The interlocutory orders were not certified for appeal pursuant to HRS § 641-17 and are not immediately appealable by Akina by way of a cross-appeal. Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision."); HRAP 4.1(a)(3) ("In criminal cases, . . . the defendant may file a cross-appeal . . . if the appeal is otherwise allowed by law."). The time for seeking interlocutory certification of the October 3, 2000 and April 18, 2001 orders

expired by the time Akina claims the circuit court was divested of jurisdiction to hear a certification motion. See State v. Irvine, 88 Hawai'i 404, 967 P.2d 236 (1998) (interlocutory certification must be sought and obtained within thirty days after entry of the order appealed). The appeal of the October 3, 2000 and April 18, 2001 orders is premature and we lack jurisdiction. Therefore,

IT IS HEREBY ORDERED that the cross-appeal by defendant Gordon Akina is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 12, 2001.